Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 27 ORIGINAL

STATE OF TENNESSEE,
Plaintiff,

vs.

STATE OF ARKANSAS,
Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT

COMPLAINT AND BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

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NO. ..... ORIGINAL

STATE OF TENNESSEE,
Plaintiff,

vs.

STATE OF ARKANSAS,
Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Tennessee, appearing by and through its Attorney General, Brooks McLemore, acting pursuant to the authority and powers vested in him by Tennessee Code Annotated Section 8-610, respectfully states as follows:

1. A portion of the boundary between the State of Tennessee and the State of Arkansas common to the County of Lauderdale, Tennessee, and the County of Mississippi, Arkansas, is in dispute.

2. This boundary dispute between the State of Tennessee and the State of Arkansas is subject to the exclusive

original jurisdiction of the Supreme Court of the United States.

3. An action is presently pending in the United States District Court for the Western District of Tennessee, Western Division, styled *Reviere v. Westvaco, Inc. and the State of Arkansas*, No. C-76-183, in which, as shown by Exhibit "A" annexed to the attached Complaint, the defendant State of Arkansas is claiming jurisdiction and control over a portion of the lands involved in this boundary dispute contrary to the continued assertion of jurisdiction, dominion and control of said area by the State of Tennessee under its inherent sovereignty. The *Reviere v. Westvaco, Inc. and the State of Arkansas* civil action has been stayed, as shown by Exhibit "B" annexed to the attached complaint.

WHEREFORE, the State of Tennessee respectfully prays that this Honorable Court take original jurisdiction and grant to the plaintiff leave to file its complaint in this Court, and plaintiff further prays for such order and process as the Court may deem proper in pursuance of the annexed complaint and application for order.

BROOKS McLEMORE
Attorney General
State of Tennessee

ROBERT J. AMES
Assistant Attorney General

ROBERT B. LITTLETON
Assistant Attorney General

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. ..... ORIGINAL

STATE OF TENNESSEE,
Plaintiff,

vs.

STATE OF ARKANSAS,
Defendant.

COMPLAINT

The State of Tennessee, appearing by and through its Attorney General, Brooks McLemore, acting pursuant to the authority and power vested in him by Tennessee Code Annotated Section 8-610, institutes this original action against the State of Arkansas and makes parties hereto the following citizens of the State of Arkansas: The Honorable David Pryor, Governor of the State of Arkansas, and the Honorable William J. Clinton, Attorney General for the State of Arkansas.

I

The original jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States and 28 U.S.C. § 1251(a)(1) (1948).

II

The State of Tennessee was admitted to the Union of the United States of America by an Act of Congress in 1796. Act of June 1, 1796, ch. 47, 1 Stat. 491. Under the terms of the Treaty of Peace between Great Britain and the United States, which was concluded on September 3, 1783, 8 Stat. 80, the territory comprising, *inter alia*, the present State of Tennessee, was passed to the United States. Article II of this Treaty described the western boundary of this territory as "a line to be drawn along the middle of said river Mississippi." Treaty of Peace, *supra.*, 8 Stat. 80, 82. In 1790 the territory comprising the present State of Tennessee was ceded to the United States by the State of North Carolina. Act of April 2, 1790, ch. 6, 1 Stat. 106. The whole of the territory thus ceded by the State of North Carolina was made the State of Tennessee by the previously cited Act of June 1, 1796, ch. 47, 1 Stat. 491.

III

The State of Arkansas was admitted to the Union on June 15, 1836 by an Act of Congress. Act of June 15, 1836, ch. 100, 5 Stat. 50. This Act describes the State's boundaries as follows:

> "Beginning in the middle of the main channel of the Mississippi river, on the parallel of thirty-six degrees north latitude, running from thence west, with the said parallel of latitude, to the St. Francis river; thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the State of Missouri; and from thence to be bounded on the west, to the north bank of Red River, by the lines described in the first article of the treaty between the United States and the Cherokee Nation of

Indians west of the Mississippi, made and concluded at the city of Washington on the 26th day of May, in the year of our Lord one thousand, eight hundred and twenty-eight; and to be bounded on the south side of Red river by the Mexican boundary line, to the northwest corner of the State of Louisiana; thence east, with the Louisiana state line, to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of the said river, to the thirty-sixth degree of north latitude, the point of beginning."

IV

The effect of these Congressional enactments, as interpreted by this Honorable Court in *Arkansas v. Tennessee*, 246 U.S. 158 (1918), is that the middle of the main navigable channel, or thalweg, of the Mississippi River is the common boundary between the States of Arkansas and Tennessee.

V

Under the law of the State of Arkansas, a riparian owner owns to the ordinary high-water mark of the Mississippi River and the State owns the bed of the River to the boundary line of the States of Arkansas and Tennessee. Under the law of the State of Tennessee, a riparian owner owns to the ordinary low-water mark of the Mississippi River and the State owns the bed of the River to the boundary line of Tennessee and Arkansas.

VI

Prior to 1912, the main channel and thalweg of the Mississippi River between latitude 35 degrees 46 minutes N. and latitude 35 degrees 39 minutes N. flowed to the west and north

of a series of islands, towheads and bars in the area known as Plum Point Reach. The two major islands, towheads or bars, in this area were Island No. 30 and Elmot (Elmont) Bar, later also to be known as an island. In 1912 and 1913, major Mississippi River flooding occurred in the Plum Point Reach area. Additionally, during the same period of time, the main channel of the Mississippi River immediately north of Plum Point Reach shifted from the northwestern side to the southeastern side of Forked Deer Island, also known as Island No. 26 and Island No. 27. The shift in the main channel of the River at Forked Deer Island caused the River to direct its flow in a straight line for some distance along the left descending bank of Plum Point Reach. During the period from 1914 through 1920, as a combined result of the 1912 and 1913 floods and the shift of the main channel of the River at Forked Deer Island, a series of dikes to the south and east of Elmot Bar near Golddust, Tennessee, collapsed, and the Mississippi River progressively carved out a new main channel to the south and east of Elmot Bar, Island No. 30 and other islands, towheads and bars. Concurrently, the former main channel to the north and west of Elmot Bar, Island No. 30 and other islands, towheads and bars, was lessened by channel filling. Between 1918 and 1920, the enlarged chute channel along the left descending bank of the Mississippi River became the main navigational channel of the River in Plum Point Reach, thereby causing navigation to abandon the boundary channel to the north and west of said islands, towheads and bars.

VII

As the Mississippi River proceeded to carve out its new main channel along the left descending bank, as described in paragraph VI of this Complaint, Island No. 30, Elmot Island as well as other smaller island areas were gradually extended both downriver and westward by virtue of the force of the flow of

the Mississippi River, which eroded the heads of the islands while adding accretions to the west sides and lower ends of each of these islands. The net effect of the combined and concurrent erosion and accretion was to cause the islands to extend their external limits downstream and westward toward the Arkansas bank as the Mississippi River gradually abandoned the old boundary channel that looped these island areas along the right descending bank.

VIII

In the early 1930's, the United States Army Corps of Engineers conducted bank revetment, dike and dredging projects in order to facilitate the flow of the Mississippi River in the Plum Point Reach area and to improve navigation. Two of the dredging projects resulted in two land masses being severed from the Tennessee mainland near Keyes Point. The two land masses severed from the mainland thus became island areas and, like Elmot Island, Island No. 30 and other islands, towheads and bars, these two island areas extended westward to the Arkansas bank due to the erosion and accretion forces of the Mississippi River flowing through and enlarging the dredged channels.

IX

The westward and southward extension of Elmot Island, Island No. 30, the dredge-created islands and several other island areas toward the Arkansas bank, eventually resulted in their consolidation into the large land area that borders the abandoned boundary channel as shown on the map appended to this Complaint as Exhibit "C". As illustrated by this exhibit, this large area of island lands is generally separated from the Arkansas mainland by a narrow remnant of the abandoned boundary channel stretching from Fletcher Towhead to south

of Bullerton Towhead. Within the large area of the island lands, there are two or three small areas the State of Tennessee claims which are presently attached to the Arkansas mainland and which became separated from the island lands by the River's avulsive action. Marked on the attached Exhibit "C", by a dotted line, is the entire area involved in this boundary dispute and claimed by the State of Tennessee. Exhibit "C" is a photographic reproduction and reduction of four quadrangle maps depicting Plum Point Reach as issued by the United States Geological Survey in 1972.

X

The shift of the main commercial channel of the Mississippi River in Plum Point Reach from the right descending bank to the left descending bank, caused Elmot Island, Island No. 30 and other smaller island areas and bars thereafter to be located on the Arkansas side of the River. This shift was avulsive. In this natural process, the River enlarged and adopted the lesser chute channel to the south and east of these island formations, thereby leaving the Tennessee-Arkansas state boundary fixed along the thalweg of the old abandoned boundary channel to the north and west of these island formations.

XI

The changes in the main navigable channel of the Mississippi River, as a result of the two (2) dredgings described in paragraph VIII of this Complaint, were avulsive. The boundary between the states of Arkansas and Tennessee, as described in paragraph X of this Complaint, was not altered by these dredgings and channel changes which occurred within the State of Tennessee.

XII

Since the time of the changes of the main navigable channel of the Mississippi River in the Plum Point Reach area, as described heretofore, disputes and litigation involving the ownership and taxation of the land area in question have arisen. *Reviere v. Westvaco, Inc., et al.*, United States District Court, Western District of Tennessee, Western Division, No. C-76-183; *Smith v. Smith*, United States District Court, Eastern District of Arkansas, Jonesboro, Division, No. J-702-38 (April 4, 1973); and *Conway v. Shuck*, 203 Ark. 559, 157 S.W.2d 777 (1942). These legal controversies have created uncertainty as to the collection of taxes and private ownership of land in the area and make it desirable that the state boundary be fixed and determined by this Court. The decision of the Supreme Court of the United States herein will be conclusively binding on all private parties, and it alone has the power to fix and determine the boundary between the sovereign States of Arkansas and Tennessee.

XIII

In the necessary and essential exercise of sovereign rights, the exact location of the boundary line betwen the State of Tennessee and the State of Arkansas, in the area described, is of major and substantial significance to the respective states in view of the great value of the lands involved, the need to avoid multiplicity of suits involving title to the lands, and the necessity of fixing a boundary line for purposes of taxation.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays:

1. That process issue to all parties as required by law;
2. That a Special Master be appointed to hear this cause;
3. That on final hearing, the boundary line of the State of Tennessee and the State of Arkansas, from just

south of Golddust, Tennessee, to the foot of Bullerton Towhead, Arkansas (approximately from AHP mile 791 to AHP mile 784), be fixed and determined.

4. That the claim of right and title asserted by the Honorable David Pryor, Governor of the State of Arkansas, and the Honorable William J. Clinton, Attorney General of the State of Arkansas, in and to such Tennessee lands as fixed and determined herein, be herewith cancelled and forever held for naught.

5. That petitioner have such other and further relief as is just.

Respectfully submitted,

BROOKS McLEMORE
Attorney General
State of Tennessee

ROBERT J. AMES
Assistant Attorney General

ROBERT B. LITTLETON
Assistant Attorney General

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. ..... ORIGINAL

STATE OF TENNESSEE,
Plaintiff,

vs.

STATE OF ARKANSAS,
Defendant.

BRIEF OF THE STATE OF TENNESSEE IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

OPENING STATEMENT

As set forth in the Motion and the Complaint, filed by the State of Tennessee, the proposed suit involves a determination of the exact location of a portion of the eastern boundary line of the State of Arkansas common to the State of Tennessee.

I

JURISDICTION OF SUITS BETWEEN STATES

The Supreme Court of the United States has exclusive original jurisdiction of all controversies between states. As set forth in Article III, Section 2, Clause 1 of the Constitution:

> "All cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction."

The provisions of 28 U.S.C. § 1251(a)(1) (1948) are as follows:

> "(a) The Supreme Court shall have original and exclusive jurisdiction of:
>
> "(1) All controversies between two or more states; . . ."

II

THE MOTION FOR LEAVE TO FILE SHOULD BE GRANTED

Jurisdiction vests since this is a suit between the States of Tennessee and Arkansas.

The value of the property involved is great. The rights of the State of Tennessee, its citizens and property owners are real and substantial. The controversy exists and is justiciable. The Supreme Court of the United States is the only forum to settle this dispute, fix the boundary line between the States, and determine finally the rights of the parties. See *Florida v. Georgia*, 17 How. 478 (1855); *Oklahoma v. Texas*, 258 U.S. 574 (1922); and *Texas v. Florida*, 306 U.S. 398 (1939).

III

CONCLUSION

Based on the foregoing authorities, the State of Tennessee respectfully requests that its Motion for Leave to file Complaint be granted.

Respectfully submitted,

BROOKS McLEMORE
Attorney General
State of Tennessee

ROBERT J. AMES
Assistant Attorney General

ROBERT B. LITTLETON
Assistant Attorney General

APPENDIX

EXHIBIT A

In the United States District Court for the
Western District of Tennessee
Western Division

Calvin B. Reviere, Sr., **Plaintiff,**

v. No. C-76-183

Westvaco, Inc., **Defendant.**

Motion of the State of Arkansas to Intervene as a Defendant

The State of Arkansas by and through Bill Clinton, Attorney General of Arkansas, files this Motion to Intervene as a Defendant in the referenced cause and in support thereof states:

1. The State of Arkansas through the Attorney General moves for leave to intervene as a defendant in this action in order to assert defenses against the claim of Calvin B. Reviere, Sr. who claims ownership of property either located on or that is a part of Elmont Island as a result of purportedly acquiring it by virtue of a tax sale held by the County of Lauderdale in the State of Tennessee.

2. In support of its Motion to Intervene, the State of Arkansas would show that its political subdivision, Mississippi County, has collected the taxes and exercised civil and criminal jurisdiction over the land known as Elmont Island for more than 30 years. During this time there have been two challenges from Tennessee residents and officials claiming that the lands are within the State of Tennessee. The Supreme Court of the State of Arkansas and the U.S. District Court for the Eastern District of Arkansas, Jonesboro Division, have held that the land known as Elmont Island is located in the State of Arkansas.

3. The lands adjacent to those claimed by the plaintiff in the above captioned cause and forming a part of the same island

formation as apparently claimed by the plaintiff in his Complaint are owned by Arkansas residents who pay taxes to and seek the protection of the State of Arkansas through its political subdivision insofar as civil and criminal jurisdiction are concerned.

4. The Arkansas Game and Fish Commission has easements of record properly recorded in Mississippi County, Arkansas, in furtherance of their jurisdiction, activities, and conservation practices.

Very similar issue of fact and law asserted in the Complaint exist between intervenor and the plaintiff and such issues are common to those in the main action. The intervention will in no degree delay or prejudice adjudication of the rights of the parties.

Bill Clinton
Attorney General
Justice Building
Little Rock, Arkansas 72201
By: Frank B. Newell
Deputy Attorney General

Certificate of Service

I, Frank B. Newell, Deputy Attorney General, do hereby certify that a copy of the foregoing Motion to Intervene has been forwarded by U.S. Mail, postage prepaid to Mr. Calvin B. Reviere, Sr., by his attorney, Robert G. Miller, 116B Jefferson Street, Ripley, Tennessee 38063, Mr. John P. Colton, Jr., Suite 1205, 100 North Main Building, Memphis, Tennessee 38103, Mr. G. D. Walker, attorney for Armstrong Cork Company, P.O. Box 1346, Jonesboro, Arkansas 72401 and Westvaco, Inc., by their attorney, Dale Woodall, 900 Memphis Bank Building, Memphis, Tennessee 38103 this 17 day of March, 1977.

Frank B. Newell
Deputy Attorney General

EXHIBIT B

September 28, 1977

Robert M. McRae
Judge
Mr. Robert G. Millar
116 B Jefferson
Ripley, Tennessee 38063

Mr. John P. Colton, Jr.
No. 1205 100 North Main
Memphis, Tennessee 38103

Mr. Dale Woodall
Mr. Charles P. Cobb
No. 900 Memphis Bank Building
Memphis, Tennessee 38103

Mr. Frank B. Newell
Deputy Attorney General
Justice Building
Little Rock, Arkansas 72201

Re: C-76-183, **Reviere v. Westvaco, Inc. and the State of Arkansas**

Gentlemen:

This is to inform you that the Honorable Brooks McLemore, Attorney General for the State of Tennessee, has advised me that it is the present intention of the State of Tennessee to file suit in the United States Supreme Court in order to resolve a disputed boundary between the states of Arkansas and Tennessee. It is my understanding and belief that this litigation will

involve real property that is the subject of the above-styled pending case in this Court. Therefore, I agree with those who believe that we should await the outcome of the Supreme Court litigation before trying the case in question.

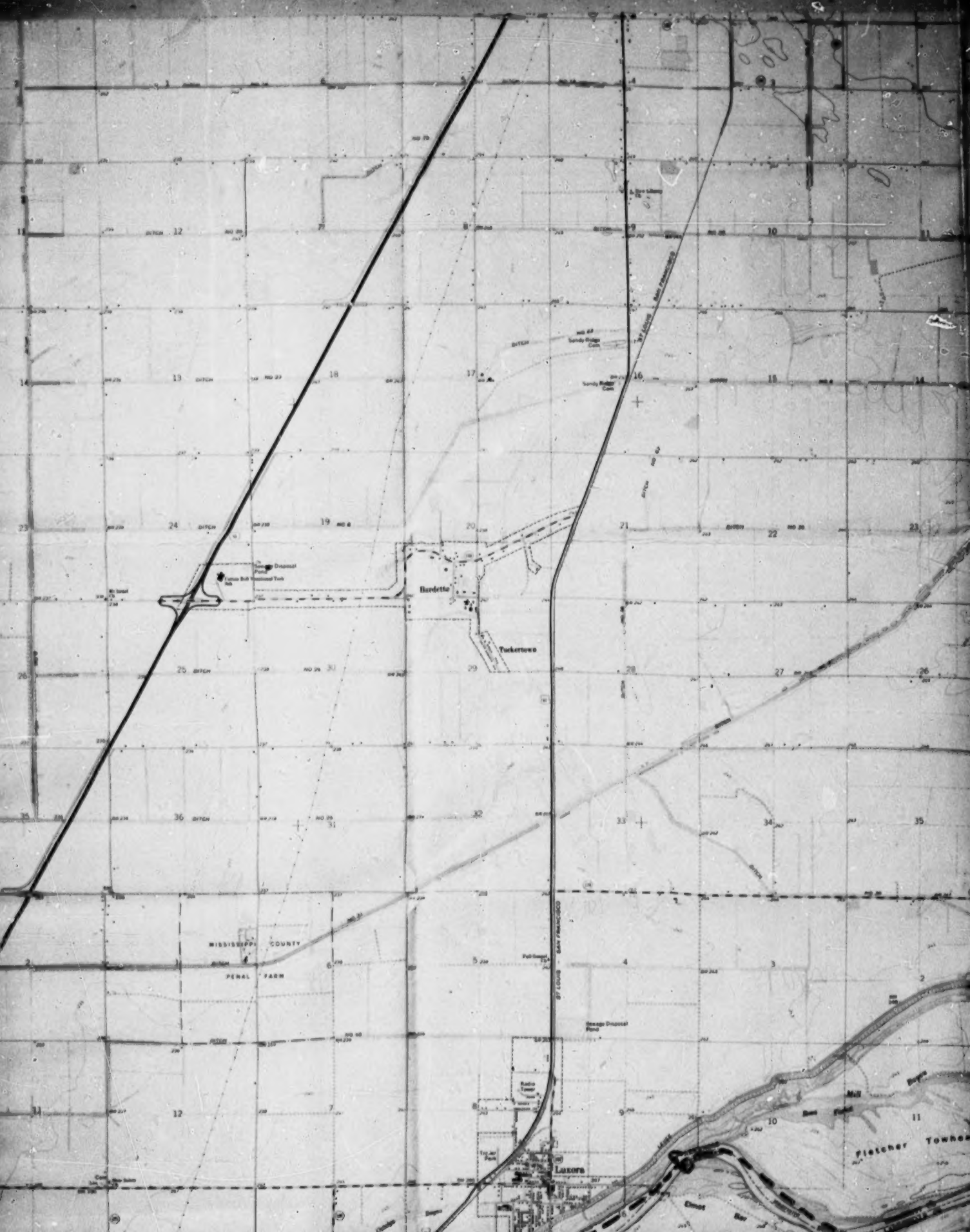
I do not know how long it will take to resolve the case in the Supreme Court; however, based upon limited experience with other matters such as this, it could be a matter of years. It is my suggestion that we stay this case in this Court by not putting it on the calendar for pre-trial and trial. By copies of this letter I will request that the offices of the Attorney General of the State of Arkansas and of Tennessee advise the Court in a year as to the status of the pending case. Of course, if for any reason the litigation is settled or otherwise terminated prior to that time, we would expect to be advised of its termination.

Very truly yours,

/s/ Robert M. McRae

RMM/jb

cc: The Hon. Brooks McLemore
Court Clerk


Hardette
Tuckertown
MISSISSIPPI COUNTY
PENAL FARM
ST LOUIS - SAN FRANCISCO
Luxora
Fletcher

MISSISSIPPI
RIVER
ISLAND NO 35
Tailler
Islands
MISSISSIPPI
RIVER

RIVER
MISSISSIPPI

KATE AUBREY
TOWNHEAD
RIVER
PLUM POINT REACH